

all costs accrued above and below, and give judgment for the same and may enforce the same by execution. In *Sellers v. Zimmerman*, 21 Md. 355, it was held that on judgment being reversed the *appellant* was entitled to his costs in both Courts. And in *Greff v. Fickey*, 30 Md. 75, where two appeals had been taken by the appellant, and one was dismissed, though he succeeded on the other and in the case, he was charged with the costs of the appeal dismissed. The costs of reversing a judgment for the defendant in ejectment are recoverable in an action of trespass for mesne profits, *Newell v. Roake*, 7 B. & C. 404. Sec. 42⁷ provides that in appeals from equity⁸ and the Orphans Court⁹ the awarding of costs shall

⁷ Code 1911, Art. 5, sec. 67.

⁸ **Appeals from equity courts.**—While sec. 67 of Art. 5 of the Code of 1911 provides that in appeals from equity courts the awarding of costs shall be in the discretion of the Court of Appeals; yet sec. 26 of the same article provides that if the Court of Appeals shall affirm the decree of the lower court, they shall not award costs of the appeal against any one except the appellant.

The established doctrine in this state is that in equity the awarding of costs is within the sound discretion of the trial court from the exercise of which no appeal will lie. "Courts of Equity in this State always exercise a discretionary power upon the subject of costs, and if the decree is in other respects right, it will not be disturbed, even if in the judgment of this Court there was an improper direction as to the party or fund charged with their payment." *Hamilton v. Schwehr*, 34 Md. 117; *Mears v. Moulton*, 30 Md. 142; *Smith v. Shaffer*, 50 Md. 132; *Gebhart v. Merfield*, 51 Md. 322; *Dodge v. Stanhope*, 55 Md. 113; *Owings v. Rhodes*, 65 Md. 408; though see *Poultney v. Tiffany*, 112 Md. 637; *Leviness v. Gas Co.*, 114 Md. 573. But if the order or decree appealed from is reversed upon other grounds, the question of costs is necessarily open to be disposed of by final order. *Columbian Asso. v. Crump*, 42 Md. 192. The discretion of the lower court as to costs, however, does not extend to a trustee's commissions. *Gustav Asso. v. Kratz*, 55 Md. 398.

In remanding cases under sec. 38 of Art. 5 of the Code of 1911 the Court of Appeals makes no disposition as to costs, but all the costs of the case including those of the appeal remain subject to the final decree. *Smith v. Shaffer*, 50 Md. 132; *Perkins v. Emory*, 55 Md. 27.

Where a trustee, having no right to appeal, does so, costs will be allowed out of the fund if in so appealing he has acted in good faith and in the discharge of what he supposed to be his duty. *Frey v. Shrewsbury Inst.*, 58 Md. 151. Cf. *Knabe v. Johnson*, 107 Md. 616.

When a decree of the Court of Appeals reverses the lower court and remands the case for further proceedings with costs against the appellant, this includes costs above and below up to the time of the remand, but costs incurred afterwards abide the final result. *Garrison v. Hill*, 81 Md. 206.

One who is not a party to an appeal cannot be made to pay costs of the same. *Schluderberg v. Robertson*, 60 Md. 602. Nor can one of several appellants be charged with the costs of the entire record when only a